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12 *Attorney for Petitioner Clifford McClain

13 UNITED STATES DISTRICT COURT
14 DISTRICT OF NEVADA

15 Clifford McClain,

16 Petitioner,

17 v.

18 Brian Williams, *et al.*,

19 Respondents.

Case No. 2:17-cv-00753-RFB-NJK

**Unopposed motion for extension of
time to file amended petition or
move to stay proceedings**

(Fifth Request)

POINTS AND AUTHORITIES

1
2 1. Petitioner Clifford McClain respectfully asks this Court to enter an Order
3 extending his deadline to file an amended petition or, alternatively, move to stay his
4 proceedings before this Court by 7 days until Friday June 12, 2020. Mr. McClain does
5 not anticipate requesting any further extensions.

6 2. On July 9, 2019, this Court entered an Order¹ granting respondents' motion to
7 dismiss² Mr. McClain's pro se 28 U.S.C. § 2254 amended petition.³ The Court found
8 petitioner's pro se petition to comprise a "mixed" petition containing both exhausted
9 and unexhausted claims and to be subject to dismissal.⁴ Thus, the Court ordered that
10 Mr. McClain either voluntarily abandon the unexhausted claim, return to state court
11 to exhaust his unexhausted claim, or file a motion to hold proceedings in abeyance
12 while he returns to state court to exhaust his claims.⁵ In its July 29, 2019 Order,
13 this Court also appointed the Federal Public Defender as counsel for petitioner and
14 ordered that it undertake representation within thirty (30) days and file an amended
15 petition for a writ of habeas corpus within sixty (60) days or by October 7, 2019.

16 3. Undersigned counsel entered his appearance in this matter on August 8, 2019.⁶
17 On April 6, 2020, counsel filed a fourth request for an extension of time, rendering
18 June 5, 2020 the new deadline to file an Amended Petition.⁷ Undersigned counsel
19 now requests a final extension of 7 days to file an amended petition or, alternatively,
20 move to stay his proceedings.
21

22
23 ¹ ECF No. 39.

24 ² ECF No. 30.

25 ³ ECF No. 28.

26 ⁴ ECF No. 39 at p. 9.

⁵ *Id.*

⁶ ECF No. 40.

⁷ ECF No. 44.

1 4. An extension of time to file is merited on account of various filing deadlines
2 undersigned counsel recently had to meet in non-capital and capital habeas matters.
3 An extension of time is also necessary in light of the difficulties posed by the COVID-
4 19 pandemic.

5 5. The World Health Organization declared a global pandemic on March 11, 2020.
6 *WHO Director-General's Opening Remarks at The Media Briefing On COVID-19*,
7 World Health Organization, [https://www.who.int/dg/speeches/detail/who-director-](https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020)
8 [general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020](https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020). The
9 outbreak relates to COVID-19, the novel coronavirus. COVID-19 is a highly
10 contagious respiratory illness that causes fever, cough, and shortness of breath. *See*
11 *Coronavirus Disease 2019 (COVID-19)*, Centers for Disease Control and Prevention,
12 <https://www.cdc.gov/coronavirus/2019-ncov/index.html>. The virus also leads to
13 serious complications, including death, in a significant portion of the population—
14 particularly in people over the age of 60 or with other underlying health conditions.
15 *Severe Outcomes Among Patients with Coronavirus Disease 2019 (COVID-19)*,
16 Centers for Disease Control and Prevention, [https://www.cdc.gov/mmwr/volumes/69/](https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e2.htm)
17 [wr/mm6912e2.htm](https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e2.htm). According to Johns Hopkins University, as of June 5, 2020, there
18 were 6,682,531 confirmed cases in the world, with 392,320 deaths. Johns Hopkins
19 University, Coronavirus Resource Center, <https://coronavirus.jhu.edu/> (last visited
20 June 5, 2020 at 9:30 AM). As of June 4, 2020, there were 1,842,101 cases in the United
21 States, with 107,029 deaths. *Cases in U.S.*, Centers for Disease Control and
22 Prevention, [https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-](https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html)
23 [us.html](https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html) (last visited June 5, 2020 at 9:30 AM).

24 6. The Governor of Nevada, Steve Sisolak, declared a state of emergency on
25 March 12, 2020. *Declaration of Emergency for COVID-19*, Nevada Governor Steve
26 Sisolak (Mar. 12, 2020), [http://gov.nv.gov/News/Emergency_Orders/2020/2020-03-](http://gov.nv.gov/News/Emergency_Orders/2020/2020-03-12_-_COVID-19_Declaration_of_Emergency/)
[12_-_COVID-19_Declaration_of_Emergency/](http://gov.nv.gov/News/Emergency_Orders/2020/2020-03-12_-_COVID-19_Declaration_of_Emergency/). On March 20, 2020, Governor Sisolak

1 issued an emergency directive ordering all nonessential businesses to close. *Full*
2 *transcript of Gov. Sisolak's emergency directive address*, Las Vegas Sun (March 20,
3 2020, 6:30 PM), [https://lasvegassun.com/news/2020/mar/20/full-transcript-gov-](https://lasvegassun.com/news/2020/mar/20/full-transcript-gov-sisolaks-emergency-directive/)
4 [sisolaks-emergency-directive/](https://lasvegassun.com/news/2020/mar/20/full-transcript-gov-sisolaks-emergency-directive/).

5 7. The FPD implemented voluntary telework for all employees on March 16, 2020
6 and made the same mandatory on March 23, 2020. The telework measures adopted
7 require undersigned counsel to work remotely, through use of a personal computer.
8 As a result of these policies, work on Mr. McClain's case has been affected by
9 technological difficulties and lack of access to case records, as well as office supplies
10 and amenities. In addition to technical difficulties, school closures forced, and to the
11 present day, continue to force counsel to care for his 18-month old child during regular
12 working hours; unsurprisingly, the amount of work counsel is able to perform on any
13 given day has been negatively affected by this development.

14 8. On May 7, 2020, Governor Sisolak announced a phased reopening of Nevada's
15 businesses. *Gov. Sisolak: Nevada to enter Phase 1 of reopening on Saturday, May 9*,
16 Fox 5 (May 7, 2020), [https://www.fox5vegas.com/coronavirus/gov-sisolak-nevada-to-](https://www.fox5vegas.com/coronavirus/gov-sisolak-nevada-to-enter-phase-1-of-reopening-on-saturday-may-9/article_c9989a2a-9070-11ea-b513-7bff2278ba95.html)
17 [enter-phase-1-of-reopening-on-saturday-may-9/article_c9989a2a-9070-11ea-b513-](https://www.fox5vegas.com/coronavirus/gov-sisolak-nevada-to-enter-phase-1-of-reopening-on-saturday-may-9/article_c9989a2a-9070-11ea-b513-7bff2278ba95.html)
18 [7bff2278ba95.html](https://www.fox5vegas.com/coronavirus/gov-sisolak-nevada-to-enter-phase-1-of-reopening-on-saturday-may-9/article_c9989a2a-9070-11ea-b513-7bff2278ba95.html). As part of Nevada's phased reopening, Nevada businesses are
19 allowed to reopen provided they observe numerous restrictions pertaining to crowd
20 sizes, personal protective equipment, and other safety precautions. *See id.* Similarly,
21 the FPD instituted a phased reopening of its offices starting on May 18, 2020.
22 However, phase I of the policy, which is currently and indeterminately in place, only
23 allows a small number of people to physically attend the FPD's offices. Undersigned
24 counsel is not amongst the small number of individuals authorized to attend the
25 FPD's offices at this point.

26 9. In the midst of the above-referenced difficulties, undersigned counsel had to
meet deadlines in capital and non-capital habeas matters, which further prevented

1 him from finalizing Mr. McClain's petition. Likewise, undersigned counsel has
2 expended significant time pursuing petitions for compassionate relief for inmates at
3 risk of contracting Covid-19.

4 10. This requested extension will permit counsel time to finalize Mr. McClain's
5 amended petition. This is Mr. McClain's fifth request for an extension and is not made
6 for the purposes of delay, but rather in the interests of justice.

7 11. On June 5, 2020, undersigned counsel reached out to Deputy Attorney General
8 Charles L. Finlayson about this request. He reported that he did not have an
9 objection, with the understanding that his lack of objection should not be considered
10 as a waiver of any procedural defenses or statute of limitations challenges, or
11 construed as agreeing with the accuracy of the representations in this motion.

12 12. Accordingly, Mr. McClain respectfully asks this Court to grant this motion and
13 enter an order allowing him until Friday June 12, 2020 to file his amended petition
14 or, alternatively, move to stay proceedings so that he may return to state court and
15 exhaust his unexhausted claims.

16 Dated June 5, 2020.


17 Respectfully submitted,

18 Rene L. Valladares
19 Federal Public Defender

20 /s/ Martin L. Novillo

21 MARTIN L. NOVILLO
22 Assistant Federal Public Defender

23 IT IS SO ORDERED:

24 
25 RICHARD F. BOULWARE, II
26 UNITED STATES DISTRICT JUDGE

DATED this 5th day of June, 2020.